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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
AMENDMENT OF PART 95 OF THE)	
COMMISSION'S RULES TO PROVIDE)	
REGULATORY FLEXIBILITY IN THE)	WT Docket No. <u>98-169</u>
218-219 MHZ SERVICE)	RM-8951
)	
and)	
)	
AMENDMENT OF PART 95 OF THE)	
COMMISSION'S RULES TO ALLOW)	
INTERACTIVE VIDEO AND DATA)	WT Docket No. 95-47
SERVICE LICENSEES TO PROVIDE)	RM-8476
MOBILE SERVICES)	
)	
TO: The Full Commission)	

**REPLY COMMENTS OF BOSTON SPECTRUM ASSOCIATES, L.L.C. AND
HOUSTON SPECTRUM ASSOCIATES, L.L.C.**

Boston Spectrum Associates, L.L.C., and Houston Spectrum Associates, L.L.C.
(hereinafter collectively referred to as the "Companies"), by their attorney, hereby submit the
following reply comments in this proceeding:

1. In Comments filed in this proceeding, the Companies described Houston Spectrum
Associates, L.L.C., as the licensee of an IVDS system in Houston, Texas, and Boston Spectrum
Associates, L.L.C., as the licensee of an IVDS system in Boston, Massachusetts. The facts are that
Boston Spectrum Associates, L.L.C., owns 100% of the issued and outstanding stock of New
England Interactive TV, Inc., the licensee of an IVDS system at Boston, Massachusetts, while

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even fully thought out.

5. Turning now to the other comments that were filed, a number of manufacturers filed comments.¹ These comments describe ingenious systems developed by the manufacturer in an effort to find viable uses for the 218-219 Mhz band. RTT, for example, has developed systems for alarm transmission, remote meter reading and load management for power companies. It has also developed methods of eliminating interference to Channel 13 by transmitting only during vertical and horizontal TV blanking intervals. Community Teleplay has developed systems to use the 218-219 Mhz band for automobile vehicle tracking.

6. The Companies congratulate the manufacturers on their ingenuity and resourcefulness. Unfortunately, the use of the band for such purposes as meter reading and vehicle tracking cannot possibly develop systems which have a value equivalent to the millions of dollars which the Companies have invested in their IVDS licenses and interests. Therefore, the Companies urge the FCC to eliminate all artificial restrictions on the use of the 218-219 Mhz band and, in particular, the 5 second duty cycle requirement.² By eliminating all artificial restrictions on the use of the band, the FCC will free the manufacturers to develop truly useful applications which, hopefully, will justify the investment of the Companies and the investment of others in the service.

7. A number of other comments were filed by people who purchased licenses at the

¹Comments of Radio Telecom & Technology, Inc. ("RTT"); Comments of Community Teleplay, Inc.

²As pointed out in the Companies' original comments, interference to Channel 13 can be eliminated by a variety of means, including the simple utilization of vertically polarized antennas. Now that the FCC has adopted a rule specifically requiring licensees to eliminate such interference, it makes no sense to retain the 5 second duty cycle restriction. Licensees should be free to use their own devices to comply with the rule.

auctions and want to get their money back.³ The Companies are very sympathetic to the position of these commentators. However, because the Companies purchased their IVDS systems from others, instead of purchasing them at the government auctions, the Companies are not in the same position as these commentators.

8. The Companies and their investors are, in fact, in a unique position. So far as can be determined, the Boston and Houston IVDS systems, in which the Companies hold positions, are the only major market systems in the entire United States which are actually built out. Relying upon representations from EON Corporation and from the Commission, itself, the Companies' investors have poured millions of dollars into a scheme which now appears to have been nothing more than a scam. Eon Corporation's system never existed and the entire concept was flawed from the start.

9. The United States Government has a moral, if not a legal responsibility, to do everything possible to allow these innocent investors to recover at least a part of their investment. As early as 1992, the FCC, itself, was aware that EON Corporation and its predecessor, TV Answer, were making false claims in advertisements distributed to the public. Attached hereto and marked Exhibit A is an article which appeared in The Washington Post on February 17, 1997, entitled "Interactive TV Dream Fades for Licensees Some Say FCC Hyped Unproven Technology". In the article, author Mike Mills describes an incident involving former FCC Commissioner Ervin Duggin. Mills writes as follows:

"In 1992, the FCC agreed to set aside frequencies for IVDS as designed by EON.

Among the people praising IVDS in TV Answer's promotional material was FCC Commissioner Ervin Duggin. In a video the

³Comments of MKS Interactive, Inc.; Comments of Kingdon R. Hughes.

company distributed in 1992 to potential investors, he is shown saying the following, according to a transcript of the video: 'It is very exciting to be on the threshold of the age of interactivity and I think all of you are to be praised. And I think the folks at TV Answer are to be praised.'

Duggin, now head of the Public Broadcasting Service, made the statement during a panel discussion on new technologies, according to his spokesman Stu Kantor. When Duggin learned of his appearance in the promotional video, Kantor said, he tried unsuccessfully to get TV Answer to remove it.

'In the warmth of the moment he may have expressed some kind words regarding TV Answer, but he never made any express endorsement,' Kantor said.

TV Answer also hired a future FCC chairman, Hundt, to lobby on its behalf. In an interview, Hundt said he represented the company at the FCC in mid-1992, while working as an attorney for Latham & Watkins. Hundt said he was hired to defend a series of advertisements by TV Answer that promoted upcoming lotteries of IVDS licenses, after the FCC complained about the ads."

10. By the time the 1994 IVDS auction was held, Mr. Hundt had become chairman.

Mr. Hundt actually appeared at the IVDS auction and made a speech promoting the system. He countenanced the hiring of a professional auctioneer, Tradewinds, Inc., which used high-pressure tactics to promote EON Corporation's system and sell the spectrum. Commission officials promoted the system and made false claims concerning its viability. As a result of these actions, IVDS was given an official government seal of approval. Much favorable publicity resulted, which ultimately played a large part in inducing people to invest in the Companies.

11. Mr. Hundt is now gone. EON Corporation is gone. The government remains. The Companies call upon the government to do everything in its power to make the 218-219 Mhz band successful. The government should heed the comments of the manufacturers who are

grievously hindered in their attempts to develop technology for the band by such restrictions as the 5 second duty cycle. The government should also heed the comments of In-Sync Interactive Corporation, which contain many good suggestions to relieve the 218-219 Mhz service of burdensome government regulations.

12. In the long run, however, the public interest will be ill-served if the 218-219 Mhz band simply lies fallow. With the continuing pressure for spectrum from broadcasting, cellular, aircraft, military and other services, it simply will not do for this band of frequencies with their valuable propagation characteristics to be idle forever. Therefore, if all else fails, the Commission and/or the Congress may wish to consider condemnation or revocation of the licenses in this band, with proper compensation to the license holders for the investments which they have made. U.S. v. Winstar Corporation, 518 U.S. 839 (1996). The band could then be freed up and aggregated, perhaps, with other, more viable services.

Respectfully submitted,

November 24, 1998

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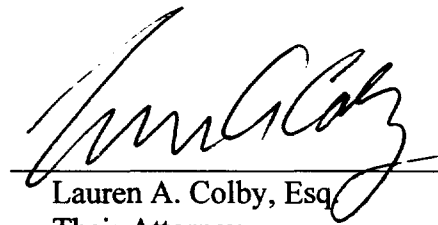

Lauren A. Colby, Esq.
Their Attorney

Exhibit A

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Interactive TV Dream Fades For Licensees Some Say FCC Hyped Unproven Technology

The Washington Post, February 17, 1997,

FINAL Edition

By: Mike Mills, Washington Post Staff Writer

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The federal government had told women, minorities and small-business owners that a special 'access ramp to the information superhighway' would be opened to them.

But a 1994 federal auction of hundreds of licenses to offer interactive television has instead proven to be a bad dream, both for the 'winners' of the auction and the auctioneer, the Federal Communications Commission.

After more than two years, not a single person who owns an Interactive Video and Data Services (IVDS) license has a paying customer. Instead, one-fifth of the 594 licenses have been repossessed for nonpayment and dozens of small businesses are on the verge of financial ruin.

'The FCC really sold us a purple cow,' said Henry Mayfield, 59, a black District resident who had bid \$450,000 to win a license to serve New Brunswick, Conn. 'This will bankrupt most of us. Some of us will never recover.' All told, the winners pledged \$214 million for the licenses.

The FCC responds that it told bidders they were not guaranteed a profit. It was up to them to research the risks their bids entailed, FCC officials said. 'I don't think we were guaranteeing anyone's success,' said Michelle Farquhar, chief of the FCC's wireless bureau. 'The marketplace speaks and sometimes . . . things take a bad turn. But that's not the FCC's bailiwick.'

The idea behind IVDS was to allow millions of Americans to 'talk back' to their TV sets. With remote-control devices in hand, they would use their televisions to shop, bank and perform other interactions. So far IVDS has not led to that, and all sides agree now that the IVDS auction was a disaster, marring what otherwise has been a hugely successful auction program by the FCC that has raised more than \$23 billion for the U.S. Treasury.

But the interactive television auctions were unlike any other. An examination of the auctions by The Washington Post found:

Many of the bidders had no experience in the telecommunications business and relied almost entirely on the FCC for information about the service's future prospects. Many were buoyed by the fact that the commission was portraying these licenses as a good way for women and minorities to enter an information-age business.

In a 'fact sheet' and other statements to potential bidders, the FCC made scant reference to the financial risks of paying dearly for a license to enter an unproven business. Instead, it frequently hyped the prospects for IVDS, saying in one document that it 'will have a major impact on our society in the 21st century.'

IVDS was largely the brainchild of Eon Corp. of Reston, which led the fight to open the airwaves to the service and then failed to deliver the necessary equipment. Along the way Eon hired Washington lobbyists to represent its interests before the FCC, including on one occasion, after the commission had agreed to assign spectrum to the service, FCC Chairman Reed E. Hundt, then a lawyer in private practice.

At the time of the auctions, Eon predicted it would have equipment ready to sell to them soon. Two and a half years later, it has not delivered it, nor has any other company. Instead, Eon and a handful of other companies are now pursuing more mundane uses for the licenses, such as utility meter reading.

The FCC, after taking a hard line of caveat emptor -- let the buyer beware -- for months, forcing many licensees into foreclosure for failing to meet payment schedules for the licenses, two weeks ago became more conciliatory. It has put off another auction of the seized licenses and is talking about giving people who still hold licenses more time and flexibility to find some other way to make a business with their frequencies.

Hundt said the license holders 'tell a very sympathetic story,' but says the FCC is not to blame for their problems.

Despite the problems with IVDS, the FCC said it has been able to indirectly diversify the communications business somewhat through its auctions. According to FCC figures, nearly half of all licenses it has auctioned so far, including those for mobile phones and pagers, have gone to companies qualifying for bidding incentives under other various FCC definitions as 'small businesses.' Some of these are controlled by women

and minorities.

A Device Born in Reston

The story begins in the mid-1980s with TV Answer, a small Reston company with seemingly limitless financial backing from three of Mexico's wealthiest industrial families. The company, renamed Eon in 1993, spent more than \$150 million to develop a device that people could use to send messages back to local TV stations or cable channels.

The signals to and from the house would need to travel over the airwaves. That meant persuading the FCC to set aside radio frequencies. Eon executives hired a clutch of Washington lobbyists, including former FCC chairman Mark Fowler, a lawyer for the law firm of Latham & Watkins. Eon also recruited to its board George Keyworth, who served as science adviser to President George Bush.

In 1992, the FCC agreed to set aside frequencies for IVDS as designed by Eon.

Among the people praising IVDS in TV Answer's promotional material was FCC Commissioner Ervin Duggin. In a video the company distributed in 1992 to potential investors, he is shown saying the following, according to a transcript of the video: 'It is very exciting to be on the threshold of the age of interactivity and I think all of you are to be praised. And I think the folks at TV Answer are to be praised.'

Duggin, now head of the Public Broadcasting Service, made the statement during a panel discussion on new technologies, according to his spokesman Stu Kantor. When Duggin learned of his appearance in the promotional video, Kantor said, he tried unsuccessfully to get TV Answer to remove it.

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TV Answer also hired a future FCC chairman, Hundt, to lobby on its behalf. In an interview, Hundt said he represented the company at the FCC in mid-1992, while working as an attorney for Latham & Watkins. Hundt said he was hired to defend a series of advertisements by TV Answer that promoted upcoming lotteries of IVDS licenses, after the FCC complained about the ads.

said he disclosed his involvement with TV Answer and all other industry clients to the FCC upon becoming chairman in December 1993. The

agency's general counsel informed him, he said, that he would not need to recuse himself from any issues involving the company. He also said no issues directly involving TV Answer have arisen.

After handing out licenses free by lottery to serve the nine biggest U.S. cities, the FCC shifted to auctions soon after Hundt's arrival in 1994, heeding a mandate by Congress to make money for the Treasury.

The law Congress had passed also ordered the FCC to try to diversify the communications industry, which is dominated by white businessmen. To that end, the agency announced it would make IVDS a localized service, thereby lowering the potential cost of a license.

It would also grant bidding discounts to minorities and women. They could, for example, win an auction by bidding \$100,000, but would have only to pay \$75,000. This was before the Supreme Court in 1995 ruled that most federal affirmative action programs were unconstitutional.

More than a dozen license holders interviewed for this article said they were persuaded by the FCC's statements at the time that it was backing IVDS as a legitimate business opportunity.

Risks Unspoken

Unlike a company selling shares to the public on a stock market, the FCC was under no legal obligation to disclose the risks inherent in what it was selling. The FCC says that it sells only the rights to the airwaves and makes no promises about whether the license can be used to create a viable business.

But the FCC did promote the potential uses for IVDS. An October 1993 'Fact Sheet' issued by the FCC said IVDS would allow consumers to talk back to their television sets, 'choose the camera angle during a sporting event, pay bills, shop-until-they-drop at malls, choose endings to TV shows, check college catalogues, play video games, choose movies on demand, or order a pizza with or without the toppings.'

An FCC booklet sent to each bidder noted that 'this spectrum has been called the access ramp to the information superhighway. . . . IVDS technologies will have a major impact on our society in the 21st century.'

Jack Clarke, an apartment building owner who lives in Adelphi, said that was enough to convince him that he should get in. Clarke said the FCC booklet led him to believe the FCC was endorsing the viability of IVDS technology. 'The FCC believed that what Eon had worked. And we believed in

the FCC,' he said.

Let the Bidding Begin

On July 28, 1994, Hundt banged the gavel to open the auction for IVDS licenses. There were two auctions going on at the Omni Shoreham Hotel that day -- the IVDS auction in the Regency Ballroom and an auction for nationwide paging licenses in the main ballroom.

The atmospheres in the two rooms were starkly different. For the paging licenses, bidders tapped bids into computers set up in kiosks. Corporate lawyers and executives quietly watched television monitors for results of the latest bidding round results, then retreated into hotel suites to plot the next round.

But down the hall at the Regency room, where the FCC was trying a licenses, a circus atmosphere prevailed. As a pair of energetic young female 'bidding assistants' raced up and down the aisles collecting bids, an auctioneer rattled off the city names and highest bids of markets up for sale.

'The whole thing behind open outcry is to pump people up and get them excited,' said Sherman Ragland, president of Tradewinds International Inc., which was hired by the FCC to hold the auctions. 'It was a very festive auction.'

FCC officials now concede that many of the people who walked into the ballroom probably should not have been there. Most had no experience in information services. Hundt later said that the FCC erred by allowing people to bid by paying only \$2,500 up front. 'That was the only mistake we made,' he said one year after the auction.

Clarke, for example, who teamed with his father to bid \$100,000 and win a license to serve State College, Pa., said the closest thing he had to experience in this field was helping run the Columbia Union College radio station in Takoma Park. 'I didn't know the difference between a megahertz and a milliwatt,' he said.

When the auction was finished, the FCC hailed the demographics of the winners: Roughly a third, the agency said, were businesses owned by minorities and more than 40 percent were owned by women.

Post-Auction Problems

Trouble began with the licenses shortly after the auctions closed. Eon based groups of license winners to Reston from downtown Washington to show

off its technology. It was then that Clarke said he became suspicious that IVDS was more glitter than reality.

'When I came back on the bus I said to my seatmate, who was a nurse, You know, I'm a little worried about this,' he said. 'The stuff they showed us was either broken or it didn't work. Something just didn't seem right.'

In the end, Eon was unable to develop a home device inexpensive enough to sell to a mass audience, officials at the company now say. Eon repeatedly postponed its delivery date for the technology, and then gradually backed away from interactive television completely.

Just one month after the auctions, financial arrangements began to crumble. The FCC said two dozen bidders failed to make required down payments on their licenses. Among them were the top two bidders, Commercial Realty St. Pete Inc. of St. Petersburg, Fla., which bid \$29.8 million for 20 licenses, and Interactive America Corp. of Sun Valley, Calif., which bid \$14 million for 15 licenses. Since, each has had its license taken away by the FCC.

Even if Eon's technology had arrived on time, the licensees might have had a very hard time making a viable business with it. Other types of interactive TV have turned out to be a bust.

Industry analysts said Americans who want interactive services are much more interested in getting them through online computer services, such as the Internet and America Online, which now have tens of millions of users. The television set has remained largely an entertainment and news medium for passive viewing.

Deadline Approaches

The license holders now approach a key deadline, March 31, on which they are obligated to begin paying principal on their licenses, not just interest. Don Linoubos, a Californian who has organized a group of fellow license holders, predicts that this will force dozens more licensees into default.

Forfeiture doesn't get them off the hook financially. Under the rules of the auction, repossessed licenses will be re-auctioned and the original owner still must pay the difference between the old and the new price, plus a penalty.

Many predict that IVDS licenses will fetch just a fraction of their original prices. But there are signs that IVDS should not be counted out

entirely.

Wincom Inc. of Los Angeles has negotiated the purchase of 190 IVDS licenses and hopes to combine them to form a nationwide network providing cable television companies with low-cost interactivity, company President Sean O'Keefe said. License owners sign their titles over to Wincom, in exchange for shares in the company and Wincom taking over payments to the FCC.

And several equipment makers, including Welcome to the Future Inc. of Columbia, and Intrinzik Technologies Inc. of Baltimore, continue to try to develop technology that IVDS license holders would buy and use to offer services.

As for Eon, it now has entirely new management and has relocated to Chantilly with only a dozen employees. The company said the \$150 million it spent on IVDS research now is focused on a more modest application -- wireless methods of monitoring vending machines and utility meters.

'We feel a great responsibility,' said Robert H. Turner, Eon's president and chief executive. 'Our obligation is to make this industry work and wipe away all the bad stuff in one fell swoop.'

CAPTIONS: The FCC's fact sheets gave no warnings about the risks of entering an unproven business based on undelivered technology.

DESCRIPTORS: Television; Technology; Auctions; Federal government

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